

The Foreclosure Process

Judicial Foreclosure

Ohio is what they call a [judicial foreclosure state](#). This means that if you stop paying your mortgage, your lender must sue you, in court, and obtain a ruling against you, before you have to leave the house. Until the lender wins in court (and until the house is sold at a public auction – called a “[Sheriff's Sale](#).”) you are the only person who has a right to be in the house. Lenders often threaten to throw you out in an attempt to get you to pay. But, they cannot do this, until they win in Court.

Complaint Must be Filed

The first step that the lender must take to convince the Court to sell your house at [Sheriff's Sale](#) is to file what is called a “[Complaint](#).” The complaint only has to state that you owe the bank money and haven't paid. The note that you signed (the promise to repay the loan) and the Mortgage (the document that you signed giving the bank a lien on your house, until you repay the note) must be attached to the complaint. Once you receive the complaint in the mail, you have 28 days to file your official response with the Court. You can request for additional time to answer (go to www.dontborrowtroublecc.org/pdf_dontborrowtrouble/en-US/time_req.pdf for a form).

Answer

The response that you must file within 28 days is called an “[Answer](#).” If you don't think that you owe the money that the lender is claiming, your answer should tell the Court why you don't think you owe the money. If you don't file an Answer, the lender will ask the Court for a [Default Hearing](#). The Default Hearing is designed to give judgment to the lender when the borrower does not appear in the case to defend himself. Filing the Answer is the first step that the borrower must take to appear in the case.

Hearings Must Take Place

The lender cannot obtain judgment against you without first being required to appear at a hearing in Court. You have the right to receive warning before any hearings take place on your case. (You can check if there are any upcoming hearing dates on your case by calling the Common Pleas Court Docket hotline (216) 443-7960, or checking the website for the [County Court](#).)

Magistrate in Place of Judge

In Cuyahoga County, Magistrates, rather than judges, hear foreclosure cases. The Magistrates can hold hearings, issue orders to either side, take evidence and preside over the entire case. However, the Magistrate's final award of Judgment in a Foreclosure case is not final until it has been agreed to by the Judge. Therefore, once the Magistrate issues a final order, either party has two weeks to file written objections with the Judge who has been assigned to the case.

Judgment Needed Before Sheriff's Sale

Nobody besides you has the right to be in the house until eight days after it is sold at [Sheriff's Sale](#). The house will not be set for Sheriff's sale until the Court has awarded judgment to the lender. The exact date when the sale will take place will be listed on the Court's docket on the internet.

Borrowers Options

Most lenders want to help the borrower who has been sued in foreclosure. They have people who try to help borrowers enter into repayment plans. (even after they are in foreclosure) Those departments are called “Loss Mitigation.” When you are in foreclosure and want to call your lender for help, you should ask for the Loss Mitigation Department. Click [here](#) for a sample request for additional time to answer. Click [here](#) for a sample request for the closing documents.

Timeline

The time between the filing of a foreclosure [Complaint](#) and the [Sheriff's sale](#) used to take anywhere between 1 ½ and 2 years. Now, that time is much shorter. The Court is trying to take steps to shorten that time to one year. It will most likely be at least 6 months from the time the Complaint is filed until the Sheriff's Sale occurs, however. To be sure, you should check the Common Pleas Civil Docket every two weeks if you have been sued in foreclosure.

After the Sheriff's Sale takes place, the Court's Magistrates have to “confirm” the sale. This means that they have to review the sale and make a ruling that it was legal. 99.9 % of the time, the sale is confirmed and the clock starts ticking for the bank to evict whoever is left in the house at that point. The Magistrates can grant a 30-day delay, however. This is called a “stay” of the confirmation of sale. You can find a form at (www.dontborrowtroublecc.org/pdf_dontborrowtrouble/en-US/mtnstayconfirmation.pdf)